TESTIMONY OF SID ROCKE
DIRECTOR, MEDICAID FRAUD CONTROL UNIT
ON BEHALF OF CHARLES C. MADDOX, ESQ.
INSPECTOR GENERAL

Before the District of Columbia City Council
Committee on the Judiciary

OCTOBER 14, 2001

GOOD MORNING CHAIRPERSON PATTERSON AND MEMBERS OF THE COMMITTEE. I AM SID ROCKE, DIRECTOR OF THE OFFICE OF THE INSPECTOR GENERAL'S (OIG) MEDICAID FRAUD CONTROL UNIT (MFCU), WHICH INVESTIGATES HEALTHCARE FRAUD AND PATIENT ABUSE.

I AM PLEASED TO TESTIFY BEFORE YOU TODAY ON BEHALF OF THE OFFICE OF THE INSPECTOR GENERAL ABOUT BILL 14-2, THE "MISDEMEANOR JURY TRIAL ACT OF 2001," BECAUSE PASSAGE OF THIS LEGISLATION WOULD CREATE CIRCUMSTANCES THAT COULD DIRECTLY IMPEDE MY UNIT'S ABILITY TO OPERATE EFFECTIVELY. EQUALLY IMPORTANT, THE LEGISLATION WOULD CREATE UNFORTUNATE CONSEQUENCES FOR THE DISTRICT AND ITS RESIDENTS. SPECIFICALLY, PASSAGE OF THIS LEGISLATION WOULD HAVE THE FOLLOWING NEGATIVE CONSEQUENCES: FIRST, IT WOULD SLOW THE JUDICIAL PROCESS; SECOND, IT WOULD INCREASE COURT COSTS; AND, THIRD, IT WOULD ADD TO THE POTENTIAL DISTRESS FELT BY CRIME VICTIMS.

PERHAPS THE BEST WAY TO EXPLAIN THE DISADVANTAGES INHERENT IN THIS BILL IS TO SHARE A VERY RECENT EXPERIENCE WE ENCOUNTERED WHILE HANDLING AN EGREGIOUS CASE IN WHICH A PATIENT WAS ABUSED IN A GROUP HOME. THIS EXAMPLE ILLUSTRATES ASPECTS OF THE CURRENT SYSTEM OF HANDLING MISDEMEANORS WHICH ARE WELL BALANCED AND WHICH PROVIDE EFFICIENT JUSTICE. FURTHERMORE, IT POINTS TO THE DISADVANTAGES THAT COULD RESULT UPON PASSAGE OF THIS BILL.

RECENT CASE IN AN EFFECTIVE JUDICIAL PROCESS

ON MAY 20, 2001, WINFRED LEE, A CAREGIVER IN ONE OF THE DISTRICT'S GROUP HOMES FOR THE MENTALLY RETARDED, BEAT A LEGALLY BLIND RESIDENT UNDER HIS CARE WITH HIS FISTS AND A CURTAIN ROD. THIS MATTER WAS INVESTIGATED BY OUR MFCU AND WAS TRIED IN SUPERIOR COURT JOINTLY BY OUR ATTORNEYS AND THE U.S. ATTORNEY'S OFFICE. MR. LEE WAS CHARGED IN A TWO-COUNT CRIMINAL INFORMATION WITH ASSAULT AND WEAPONS COUNTS. SINCE THESE ARE BOTH MISDEMEANOR CHARGES PUNISHABLE BY UP TO 180 DAYS IN JAIL, UNDER CURRENT LAW THEY ARE NOT JURY DEMANDABLE OFFENSES.

THE CASE WAS CALLED FOR TRIAL ON SEPT. 22, 2001, IN THE CRIMINAL DIVISION OF THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA.

THREE CIVILIAN WITNESSES WHO TOOK THE DAY OFF FROM WORK APPEARED, ALONG WITH PROSECUTORS, AN INVESTIGATOR AND DEFENSE ATTORNEY. ALTHOUGH NO JUDGE WAS AVAILABLE TO HEAR THE CASE THAT MORNING, A JUDGE WAS AVAILABLE IN THE AFTERNOON AND TRIAL COMMENCED LATER THAT DAY. THE GOVERNMENT PROVIDED GRAPHIC EVIDENCE OF THE BRUISES AND WELTS THE DEFENSELESS VICTIM SUFFERED AT THE HANDS OF HIS CAREGIVER, AND RESTED ITS CASE. THE DEFENDANT PRESENTED HIS DEFENSE THE NEXT DAY AND THE TRIAL THEN CONCLUDED WITH A FINDING OF GUILT. BECAUSE OF THE HEINOUS NATURE OF THIS CRIME THE DEFENDANT WAS JAILED IMMEDIATELY.

THE WITNESSES WHO TESTIFIED IN THIS VERY DISTURBING CASE PROVIDED TEARFUL AND COMPELLING TESTIMONY. THEY FOUND IT TO BE A WORTHWHILE BUT DIFFICULT PROCESS. FURTHERMORE, A STRONG, DECISIVE AND TIMELY MESSAGE WAS SENT TO HEALTH CARE INSTITUTIONS THROUGHOUT THE DISTRICT THAT THIS TYPE OF BEHAVIOR WOULD NOT BE TOLERATED. HOWEVER, BILL 14-2 WOULD MAKE THIS SORT OF SPEEDY AND JUST RESOLUTION LESS LIKELY, AND WOULD INCREASE THE POTENTIAL BURDEN ON VICTIMS, WITNESSES AND LAW ENFORCEMENT.

POTENTIAL PROBLEMS IF LEGISLATION PASSES

THE LEE CASE IS AN EXAMPLE OF WHAT WORKS. BUT, AS I NOTED, THE FAIR, EFFECTIVE AND SENSIBLE JUDICIAL PROCESS JUST DESCRIBED MAY NOT BE EASILY AVAILABLE IN THE FUTURE IF THIS BILL PASSES. LET ME NOW EXPLAIN OUR CONCERNS IN SPECIFIC TERMS. FIRST, PASSAGE OF THE LEGISLATION COULD ENCOURAGE PROSECUTORS TO SPLIT OR DROP CHARGES IN ORDER TO AVOID DELAYS ASSOCIATED WITH JURY TRIALS FOR MULTIPLE PETTY OFFENSE CASES. THIS IS PROBLEMATIC BECAUSE IT LEADS TO THE PUBLIC RECEIVING EITHER INCOMPLETE OR SLOWER JUSTICE. THE PROPOSED LEGISLATION WOULD GRANT A CRIMINAL DEFENDANT WHO IS CHARGED WITH MORE THAN ONE OFFENSE IN A CASE THE RIGHT TO DEMAND A JURY TRIAL IF THE CUMULATIVE MAXIMUM PENALTY IS A FINE OF MORE THAN $1,000 OR IMPRISONMENT FOR MORE THAN 180 DAYS. FOR EXAMPLE, A DEFENDANT WHO IS CHARGED WITH TWO COUNTS OF SECOND DEGREE THEFT (UNDER $250), D.C. CODE § 22-3811 AND § 22-3812(B), WOULD BE ABLE TO DEMAND A JURY TRIAL IF BILL 14-2 WERE ENACTED. THIS IS POSSIBLE BECAUSE EACH COUNT IS PUNISHABLE BY 180 DAYS IMPRISONMENT, RESULTING IN POSSIBLE CUMULATIVE IMPRISONMENT OF 360 DAYS. HOWEVER, THE SAME DEFENDANT, CHARGED WITH THE VERY SAME CRIMINAL ACTS, WOULD NOT BE ENTITLED TO A JURY TRIAL IF EACH COUNT WERE PLACED IN A SEPARATE CHARGING DOCUMENT.

SECOND, THE LEGISLATION WOULD HINDER THE ADMINISTRATION OF JUSTICE IN MANY MATTERS WHERE JURY TRIALS ARE NOT MANDATED BY THE U.S. CONSTITUTION. AS YOU KNOW, IN 1992 THE D.C. COUNCIL AMENDED D.C. CODE § 16-705(B) SO AS TO PRECLUDE DEFENDANTS FROM DEMANDING A JURY TRIAL FOR CHARGES PUNISHABLE BY LESS THAN 180 DAYS IMPRISONMENT. THIS AMENDMENT REPRESENTED A BALANCING OF TWO IMPORTANT GOALS: 1) THE NEED TO PROTECT A DEFENDANT'S RIGHT TO DEMAND A JURY TRIAL FOR ANY SINGLE OFFENSE PUNISHABLE BY MORE THAN SIX MONTHS IMPRISONMENT; AND 2) THE NEED TO SIMPLIFY JUDICIAL ADMINISTRATION AND INCREASE THE EFFICIENCY OF LAW ENFORCEMENT. DEFENDANTS WOULD STILL HAVE THE ABILITY TO DEMAND A JURY TRIAL FOR ALL "NON-PETTY" OFFENSES, AS IS REQUIRED UNDER THE UNITED STATES CONSTITUTION. HOWEVER,
SCARCE JUDICIAL, POLICE AND PROSECUTORIAL RESOURCES COULD BE MORE EFFICIENTLY UTILIZED ON MORE SERIOUS CRIMINAL MATTERS WARRANTING A JURY TRIAL. OTHERWISE, RESOURCES WOULD BE DIVERTED TO CHARGES PUNISHABLE BY LESS THAN SIX MONTHS.

THIS PROPOSED LEGISLATION THREATENS TO UPSET THE BALANCE ESTABLISHED IN 1992 BETWEEN PROTECTING A DEFENDANT'S CONSTITUTIONAL RIGHTS AND ACHIEVING EFFICIENT JUDICIAL ADMINISTRATION. AT PRESENT, IT IS NOT UNCOMMON FOR ALL OF THE PARTICIPANTS IN A FELONY TRIAL, I.E., DEFENDANT, PROSECUTOR,

VICTIM AND POLICE, TO APPEAR IN COURT ON A SCHEDULED DATE PREPARED FOR TRIAL, ONLY TO BE TOLD THAT THERE IS NO JURY AVAILABLE AND THAT EVERYONE MUST RECONVENE AT A LATER DATE. IN FACT, THIS CAN HAPPEN SEVERAL TIMES IN ANY ONE CASE. WE DO NOT BELIEVE IT IS WISE TO INADVERTENTLY EXACERBATE OUR COURT'S BACKLOG BY INCREASING THE NUMBER OF JURY DEMANDABLE CASES, ESPECIALLY WHEN SUCH ACTION IS NOT CONSTITUTIONALLY REQUIRED.

THIRD, AS NOTED IN MY EARLIER EXAMPLE OF A PATIENT ABUSE CASE, WHICH TAKES A TOLL ON VICTIMS AND WITNESSES ALIKE, WE ARE CONCERNED THAT REPEATED POSTPONEMENTS AND COURT APPEARANCES PENALIZE THESE INDIVIDUALS WHILE ENCUMBERING JUDICIAL ADMINISTRATION. BASED ON MY EXPERIENCE AS A PROSECUTOR AND, NOW, AS DIRECTOR OF THE MFCU, IT IS NOT UNCOMMON FOR A DEFENDANT TO HAVE ALLEGEDLY ASSAULTED A VICTIM MORE THAN ONCE, OR TO HAVE ASSAULTED SEVERAL NURSING HOME RESIDENTS. EACH CRIMINAL ACT CAN BE CHARGED UNDER D.C. CODE § 22-504(A), ASSAULT, AND COULD RESULT IN UP TO 180 DAYS INCARCERATION. SHOULD BILL 14-2 EVER BECOME LAW, A DEFENDANT CHARGED WITH ASSAULTING A NURSING HOME PATIENT ON TWO CONSECUTIVE DAYS WOULD BE ABLE TO DEMAND A JURY TRIAL. BEYOND THE ADDED EXPENSE AND DELAYED JUSTICE THIS WOULD LIKELY ENTAIL, THE VICTIM AND HIS/HER FAMILY WOULD HAVE TO

ENDURE THE EMOTIONAL ORDEAL OF PREPARING FOR TRIAL SEVERAL TIMES UNTIL A JURY CAN FINALLY BE EMPANELLED. FURTHERMORE, UPON CONVICTION IN A CASE LIKE THIS, THE DEFENDANT IS SUBJECT TO A MANDATORY EXCLUSION FROM THE MEDICAID PROGRAM. THEREFORE, EVERY DELAY BEFORE TRIAL WILL RESULT IN LONGER DELAYS BEFORE OUR MEDICAID PATIENTS HAVE THE ASSURANCE OF KNOWING THAT THIS INDIVIDUAL IS EXCLUDED FROM BEING THEIR CAREGIVER.

IN SHORT, WE BELIEVE THAT THE COUNCIL PREVIOUSLY PROVIDED MUCH NEEDED REFORM TO THE DISTRICT'S JUDICIAL SYSTEM IN THE AREA OF MISDEAMEANOR ENFORCEMENT. IT WOULD BE MOST DISTRESSING TO SEE A DEPARTURE FROM THAT PROGRESS. I AM HOPEFUL THAT THE COUNCIL WILL MAKE EVERY EFFORT TO AVOID TAKING ANY ACTION WHICH UNINTENTIONALLY SLOWS THE JUDICIAL PROCESS, INCREASES COURT COSTS, AND ADDS TO THE POTENTIAL DISTRESS FELT BY CRIME VICTIMS. WE STRONGLY OPPOSE BILL 14-2, AND URGE YOUR CONSIDERATION OF OUR CONCERNS.

I THANK YOU ONCE AGAIN FOR GIVING ME THE OPPORTUNITY TO TESTIFY REGARDING THIS BILL, AND WOULD BE HAPPY TO ANSWER QUESTIONS AT THIS TIME.